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Supreme Court of the United States

OCTOBER TERM, 1931

No. 31

MAGNO SANTOVINCENZO, Consul of the Kingdom of Italy at New York,

Appellant,

against

JAMES F. EGAN, Public Administrator of the County of New York, as Administrator of the Goods, Chattels and Credits of ANTONIO COMINCIO, Deceased, and JOHN J. BENNETT, JR., Attorney General of the State of New York,

Appellees.

APPEAL FROM SURROGATES' COURT, COUNTY OF NEW YORK, STATE OF NEW YORK

APPELLANT'S REPLY BRIEF

CARROLL G. WALTER,
RALPH ATKINS,
Of Counsel for Appellant.

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I

We have not undertaken to ask this court to review the *finding of fact* that decedent was *domiciled* in New York. The whole of Point I in the Attorney General's brief thus may be disregarded.

II

With respect to the treaty, appellee does not deny that it is susceptible to the construction for which we contend.

Neither is there any denial that the settled rule is that, when two constructions of a treaty are possible, the one which enlarges, rather than restricts, the rights claimed under it is to be preferred (Our Brief, pp. 13, 14). Nevertheless, appellee argues that our interpretation *should* not be adopted because it "would involve strange consequences" (Appellee's Brief, pp. 9, 11). The "strange consequences" instanced would not, however, ensue.

Appellee argues, for example, that it is incredible that the treaty "would operate to prevent a Persian alien, after establishing here a prosperous business, from making such testamentary disposition of his property as our law approves, merely because he lacked a family or business partners" (p. 9). We do not contend that the treaty would so operate. We think it manifest, on the contrary, that the treaty applies *only* to *intestate* estates and does not prevent the nationals of either country from making a will.

Appellee further suggests, though he does not directly assert, that under our construction of the treaty the property of Italian nationals dying here would not be subject to the decedent's debts (p. 11). We make no such pretension. Comincio's estate has been regularly applied, to the extent necessary, to the payment of administration expenses (R. 11), and the only reason it has not been applied to debts is that there are no debts (R. 11). It is only the *net* estate, remaining after administration expenses and debts are paid, which the Italian government claims.

The single case relied upon by the appellee is *Matter of D'Adamo*, 212 N. Y. 214, in which, of course, the question was quite different, *viz.*, the right of foreign consuls to *administer* the estates of their nationals, as distinguished from the right of the sovereign of which the decedent is a national to receive property to which there

is no claimant other than the sovereignty in which he was domiciled. "Strange consequences" would have followed a result different from that which was reached in *Matter of D'Adamo,* but no strange consequences would follow an adoption of our contention here.

Indeed, at page 10 of the appellee's brief we find this flat admission:

> "The conclusion is irresistible that the Persian treaty was designed to apply, and must be so construed as applying, only to *derelict estates,* as such."

With that statement we thoroughly agree. Comincio's estate *is* a derelict estate. It escheats either to New York or to Italy. The only question is: To which sovereign does it escheat?

Finally, although appellee relies upon *Matter of D'Adamo,* there is in the opinion in that case a direct statement that the treaty "applies equally to the estates of aliens who have their domicile in the United States." (See p. 12 of Our Brief, and p. 10 of Appellee's Brief.) That statement is in itself a refutation of the whole of appellee's argument.

Respectfully submitted,

CARROLL G. WALTER,
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Of Counsel for Appellant.

October, 1931.

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